

§ 1924.261

complaint will be handled in accordance with §1924.259 of this subpart.

§ 1924.261 Handling complaints involving dwellings covered by an independent or insured home warranty plan.

Borrowers with complaints about dwellings covered by an independent or insured home warranty plan will be instructed to first contact the warranty company and follow the complaint resolution process for that company, with the assistance of FmHA or its successor agency under Public Law 103-354, if needed. If the complaint is not resolved in this manner, it will be handled under §1924.259 of this subpart.

§ 1924.262 Handling complaints involving dwellings constructed by the self-help method.

When a borrower whose dwelling was constructed by the self-help method complains about construction defects, FmHA or its successor agency under Public Law 103-354 will determine whether the defect is the result of work performed by a contractor or work performed by the borrower under the guidance of the self-help group. Defects which are determined to be the responsibility of a contractor will be handled in accordance with §1924.259 of this subpart. Defects determined to be the result of work performed by the borrower are not eligible for compensation under this subpart.

§§ 1924.263-1924.264 [Reserved]

§ 1924.265 Eligibility for compensation for construction defects.

(a) To be eligible for assistance under this subpart, the following criteria must be met:

(1) The approval official, in consultation with the State Architect/Engineer and/or Construction Inspector, must determine that:

(i) The construction is defective in workmanship, material or equipment, or

(ii) The dwelling or unit has not been built in substantial compliance with the approved drawings and specifications, or

(iii) The dwelling or unit does not comply with the FmHA or its successor agency under Public Law 103-354 con-

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struction standards in effect at the time the loan was approved or the conditional commitment was issued, or

(iv) The property does not meet code requirements.

(2) The claim must be for one or more of the following:

(i) To pay for repairs;

(ii) To compensate the owner for repairs;

(iii) To pay emergency living or other expenses resulting from the defect; or

(iv) To acquire title to property.

(3) The dwelling or unit must be newly constructed as defined in §1924.253 of this subpart and financed with an insured Section 502 RH loan.

(4) The claim seeking compensation from FmHA or its successor agency under Public Law 103-354 must be filed with FmHA or its successor agency under Public Law 103-354 within 18 months after the date financial assistance is granted. Defects for which claims are filed beyond the 18-month period must have been documented by FmHA or its successor agency under Public Law 103-354 in the borrower's case file or on the form designated by FmHA or its successor agency under Public Law 103-354 (available in any FmHA or its successor agency under Public Law 103-354 office), prior to expiration of the 18-month period. For loans made to construct a new dwelling or erect a new manufactured housing unit, financial assistance is granted on the date of final construction inspection and acceptance by the borrower and FmHA or its successor agency under Public Law 103-354. Claims must be submitted by completing the designated form (available in any FmHA or its successor agency under Public Law 103-354 office).

(5) Any obligation of the contractor to correct the defect(s) under a contractor's warranty must have expired, or the contractor is responsible for making corrections under the contractor's warranty but is unable or unwilling to do so.

(b) Subsequent owners of eligible dwellings or units who are also Section 502 borrowers may be eligible to receive compensation for construction defects. These owners will be notified in accordance with §1924.258 of this

subpart. However, the claim for compensation must be filed in accordance with paragraph (a)(4) of this section within the 18-month period established for the original rural housing (RH) borrower.

§ 1924.266 Purposes for which claims may be approved.

(a) *Eligible purposes.* A claim may be approved to:

(1) Pay, or reimburse the borrower for costs already paid, to repair major structural defects which are completed in accordance with plans and specifications approved by FmHA or its successor agency under Public Law 103-354. Repairs must be made by a reputable licensed contractor and a warranty covering the repairs will be issued by the contractor when the repairs are completed, as prescribed in subpart A of this part. Payment will be based on actual cost of the development and the borrower must provide evidence to reasonably establish the development cost. Workmanship and materials used in repairs must be consistent with the level of quality specified in the original dwelling or unit specifications and/or comparable to the items being replaced. Payment may be made:

(i) To cover damages which are a direct result of the defect to permanent enhancements made, such as landscaping, completion of unfinished living spaces, etc., of the dwelling or unit, installation or set-up of the unit, or related facilities, and

(ii) For costs approved by FmHA or its successor agency under Public Law 103-354 for professional reports by engineers, architects or others needed to determine cause of or means to repair the defect.

(2) Reimburse the borrower for funds expended for emergency repairs. Emergency repairs are those repairs necessary to preserve the integrity of the structure, to prevent damage or further damage to personal property or fixtures in the dwelling or unit and related facilities, or to prevent or eliminate immediate health hazards. Receipts or other evidence of borrower's expenditures must be provided.

(3) Acquire title to the property by the Government and, when appro-

priate, compensate the claimant for any loss of borrower contribution at the time the loan was closed. Conveyance of properties under this section will be handled in accordance with 7 CFR part 3550.

(i) Before FmHA or its successor agency under Public Law 103-354 accepts a conveyance, the borrower must attempt to sell the dwelling or unit in accordance with 7 CFR part 3550, if the dwelling or unit is considered decent, safe and sanitary as prescribed in 7 CFR part 3550. If the property is sold, FmHA or its successor agency under Public Law 103-354 will:

(A) Pay the borrower's relocation expenses, including temporary living expenses as prescribed in paragraph (a)(4) of this section, until another suitable property can be located;

(B) Pay related sales expenses, as prescribed in 7 CFR part 3550, if the property is sold for less than the debt against it;

(C) Release the borrower from personal liability for the remaining FmHA or its successor agency under Public Law 103-354 debt; and

(D) Process an application for a new RH loan if the borrower so desires and is still eligible for FmHA or its successor agency under Public Law 103-354 assistance.

(ii) If the dwelling or unit is not considered decent, safe and sanitary as prescribed in 7 CFR part 3550, FmHA or its successor agency under Public Law 103-354 should accept a voluntary conveyance of the property under the provisions of 7 CFR part 3550. Compensation for properties taken into inventory under this paragraph may not exceed the difference between the present market value of the security as established by the appraisal when the loan was made and the amount of the FmHA or its successor agency under Public Law 103-354 loan and any prior liens.

(iii) A borrower contribution which may be compensated for under this paragraph may be such things as:

(A) A borrower's land or cash contribution,

(B) Development work done by the borrower under the self-help program or borrower method of construction, the cost of which was not included in the loan funds,